

### **REMARKS**

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

#### **I. CLAIM STATUS & AMENDMENTS**

Claims 1-4 were pending in this application when last examined and stand rejected.

Claims 1 and 4 are amended to incorporate the subject matter of claim 3. Further support for the revisions to these claims can be found in the disclosure, for example, at page 4, paragraph [0019], and original claims 1 and 4.

Claim 2 is amended to provide proper antecedent basis for the recited terminology. Support can be found in the claims as filed.

Minor editorial and formatting revisions were made to the claims to better conform to US practice and English grammar form. Such revisions are non-substantive and do not narrow the scope of protection.

No new matter has been added.

Claim 3 has been canceled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any cancelled subject matter.

Claims 1, 2 and 4 are pending upon entry of this amendment.

#### **II. INDEFINITENESS REJECTION**

Claims 1-4 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite for the reasons set forth in item 3 on pages 2-3 of the Office Action.

The present amendment overcomes this rejection. First, the claims have been revised to clarify how the last step in the claims correlates to the purpose set forth in the preamble. The claims were also revised to include positive method steps. For these reasons, the rejection is untenable and should be withdrawn.

### III. ANTICIPATION REJECTIONS

#### A. Garman et al.

In item 5 on page 3 of the Office Action, claims 1-2 and 4 were rejected under 35 U.S.C. § 102(b) as anticipated by Garman et al. (WO2000/22434, published April 20, 2000).

The present amendment overcomes this rejection. For the sole purpose of expediting prosecution and not to acquiesce to the rejection, claims 1 and 4 are amended to incorporate the subject matter of non-rejected dependent claim 3, thereby overcoming this rejection.

#### B. Wolinsky et al.

In item 6 on page 4 of the Office Action, claims 1-4 were rejected under 35 U.S.C. § 102(b) as anticipated by Wolinsky et al. (WO 94/00598, published January 6, 1994).

This rejection is respectfully traversed as applied to the amended claims.

To anticipate a claim, a cited prior art reference must teach each and every element of the claimed invention. M.P.E.P. § 2131.01.

Amended claims 1 and 4 call for selectively promoting diffusion of a complex formed according to affinity between the fluorescent probe molecules and the specimen molecules in the laminar flow. The claims also call for fluorometrically determining the degree of diffusion of the complex formed between the specimen molecules and the probe molecules within the micro flow channel by detecting signals emitted from the fluorescent probe molecules and comparing the results to a predetermined calibration curve to quantitatively analyze the specimen molecules. They further require comparing the results to a predetermined calibration curve to fluorometrically determining the content of the specimen molecules.

Applicants respectfully submit that Wolinsky et al. fail to disclose or suggest these elements of the claimed invention. Instead, Wolinsky et al. relate to the use flow cytometry for the selective detection of a nucleic acid sequence from DNA molecules. Wolinsky et al. never disclose or suggest selectively promoting diffusion of the complex. Nor does the reference

disclose or suggest fluorometrically determining the degree of diffusion of the formed complex and comparing the results to a predetermined calibration curve to determine the content of the specimen molecules. As such, Applicants respectfully submit that Wolinsky et al. is irrelevant to the present invention.

Accordingly, Wolinsky et al. fail to teach each and every element of the claimed invention, and therefore, cannot anticipate the claimed invention. Thus, the above-noted 102(b) anticipation rejection is untenable and should be withdrawn.

#### **IV. DOUBLE PATENTING REJECTION**

In item 8 on page 6 of the Action, claims 1 and 4 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 3 of co-pending application Serial No. 10/527,987.

Since this is a provisional rejection and the conflicting claims have not yet been patented, Applicants respectfully request the rejection be held in abeyance until one of the applications is in condition for allowance per US practice.


**V. CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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November 23, 2007